SUPREME COURT
FIRST DIVISION

SAINT MARY'S UNIVERSITY, represented by its President REV. JESSIE M. HECHANOVA, CICM,
***Petitioner*,**

-versus-

G.R. No. 157788
March 08, 2005

COURT OF APPEALS (Former Special Twelfth Division), NATIONAL LABOR RELATIONS COMMISSION (Second Division) and MARCELO A. DONELO,
***Respondents*.**
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D E C I S I O N

QUISUMBING, *J.*:

For Review on *Certiorari* are the Decision[1] dated May 21, 2002 and the Resolution[2] dated February 12, 2003 of the Court of Appeals in CA-G.R. SP No. 63240 which dismissed the petition for certiorari of St. Mary's University and its motion for reconsideration, respectively.

Respondent Marcelo Donelo started teaching on a contractual basis at St. Mary's University in 1992. In 1995, he was issued an appointment as an Assistant Professor I. Later on, he was promoted to Assistant

Professor III. He taught until the first semester of school year 1999-2000 when the school discontinued giving him teaching assignments. For this, respondent filed a complaint for illegal dismissal against the university.

In its defense, petitioner St. Mary's University showed that respondent was merely a part-time instructor and, except for three semesters, carried a load of less than eighteen units. Petitioner argued that respondent never attained permanent or regular status for he was not a full-time teacher. Further, petitioner showed that respondent was under investigation by the university for giving grades to students who did not attend classes. Petitioner alleged that respondent did not respond to inquiries relative to the investigation. Instead, respondent filed the instant case against the university.

The Labor Arbiter ruled that respondent was lawfully dismissed because he had not attained permanent or regular status pursuant to the Manual of Regulations for Private Schools. The Labor Arbiter held that only full-time teachers with regular loads of at least 18 units, who have satisfactorily completed three consecutive years of service qualify as permanent or regular employees.[3]

On appeal by respondent, the National Labor Relations Commission (NLRC) reversed the Decision of the Labor Arbiter and ordered the reinstatement of respondent without loss of seniority rights and privileges with full backwages from the time his salaries were withheld until actual reinstatement.[4] It held that respondent was a full-time teacher as he did not appear to have other regular remunerative employment and was paid on a regular monthly basis regardless of the number of teaching hours. As a full-time teacher and having taught for more than 3 years, respondent qualified as a permanent or regular employee of the university.

Petitioner sought for reconsideration and pointed out that respondent was also working for the Provincial Government of Nueva Vizcaya from 1993 to 1996. Nevertheless, the NLRC denied petitioner's Motion for Reconsideration. Aggrieved, petitioner elevated the matter to the Court of Appeals, which affirmed the Decision of the NLRC.

Hence, this petition with a motion for temporary restraining order, alleging that the Court of Appeals erred in:

> FINDING THAT THE RESPONDENT DONELO ATTAINED A PERMANENT STATUS, THE SAID FINDING BEING CLEARLY CONTRARY TO THE EVIDENCE AT HAND AND DEVOID OF BASIS IN LAW.
>
> HOLDING THAT THE TWIN-NOTICE REQUIREMENT IMPOSED BY LAW BEFORE TERMINATION OF EMPLOYMENT CAN BE LEGALLY EFFECTED MUST BE COMPLIED WITH BY THE PETITIONER.
>
> AFFIRMING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION IN ORDERING THE PETITIONER TO REINSTATE RESPONDENT DONELO TO HIS FORMER POSITION WITHOUT LOSS OF SENIORITY RIGHTS AND PRIVILEGES WITH FULL BACKWAGES FROM THE TIME OF HIS DISMISSAL UNTIL ACTUALLY REINSTATED.[5]

Plainly, the ultimate questions before us are:

1. Was respondent a full-time teacher?

2. Had he attained permanent status?

3. Was he illegally dismissed?

Petitioner contends that respondent did not attain permanent status since he did not carry a load of at least 18 units for three consecutive years; and that only full-time teachers can attain permanent status. Further, since respondent was not a permanent employee, the twin-notice requirement in the termination of the latter's employment did not apply.

Respondent argues that, as early as 1995, he had a permanent appointment as Assistant Professor, and he was a permanent employee regardless of the provisions of the Manual of Regulations for Private Schools. He asserts that he should not be faulted for not

carrying a load of at least 18 units since the university unilaterally controls his load assignment in the same manner that the university has the prerogative to shorten his probationary period. He points out also that the present Manual allows full-time teachers to hold other remunerative positions as long as these do not conflict with the regular school day. Since he is a permanent employee, respondent insists that petitioner's failure to give him the required notices constitutes illegal dismissal.

Section 93 of the 1992 Manual of Regulations for Private Schools, provides that full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.[6] Furthermore, the probationary period shall not be more than six consecutive regular semesters of satisfactory service for those in the tertiary level.[7] Thus, the following requisites must concur before a private school teacher acquires permanent status: (1) the teacher is a full-time teacher; (2) the teacher must have rendered three consecutive years of service; and (3) such service must have been satisfactory.[8]

In the present case, petitioner claims that private respondent lacked the requisite years of service with the university and also the appropriate quality of his service, i.e., it is less than satisfactory. The basic question, however, is whether respondent is a full-time teacher.

Section 45 of the 1992 Manual of Regulations for Private Schools provides that full-time academic personnel are those meeting all the following requirements:

a. Who possess at least the minimum academic qualifications prescribed by the Department under this Manual for all academic personnel;

b. Who are paid monthly or hourly, based on the regular teaching loads as provided for in the policies, rules and standards of the Department and the school;

c. Whose total working day of not more than eight hours a day is devoted to the school;

d. Who have no other remunerative occupation elsewhere requiring regular hours of work that will conflict with the working hours in the school; and

e. Who are not teaching full-time in any other educational institution.

All teaching personnel who do not meet the foregoing qualifications are considered part-time.

A perusal of the various orders of the then Department of Education, Culture and Sports prescribing teaching loads shows that the regular full-time load of a faculty member is in the range of 15 units to 24 units a semester or term, depending on the courses taught. Part-time instructors carry a load of not more than 12 units.[9]

The evidence on record reveals that, except for four non-consecutive terms, respondent generally carried a load of twelve units or less from 1992 to 1999. There is also no evidence that he performed other functions for the school when not teaching. These give the impression that he was merely a part-time teacher.[10] Although this is not conclusive since there are full-time teachers who are allowed by the university to take fewer load, in this case, respondent did not show that he belonged to the latter group, even after the university presented his teaching record. With a teaching load of twelve units or less, he could not claim he worked for the number of hours daily as prescribed by Section 45 of the Manual. Furthermore, the records also indubitably show he was employed elsewhere from 1993 to 1996.

Since there is no showing that respondent worked on a full-time basis for at least three years, he could not have acquired a permanent status.[11] A part-time employee does not attain permanent status no matter how long he has served the school.[12] And as a part-timer, his services could be terminated by the school without being held liable for illegal dismissal. Moreover, the requirement of twin-notice applicable only to regular or permanent employees could not be invoked by respondent.

Yet, this is not to say that part-time teachers may not have security of tenure. The school could not lawfully terminate a part-timer before

the end of the agreed period without just cause. But once the period, semester, or term ends, there is no obligation on the part of the school to renew the contract of employment for the next period, semester, or term.

In this case, the contract of employment of the respondent was not presented. However, judicial notice may be taken that contracts of employment of part-time teachers are generally on a per semester or term basis. In the absence of a specific agreement on the period of the contract of employment, it is presumed to be for a term or semester. After the end of each term or semester, the school does not have any obligation to give teaching load to each and every part-time teacher. That petitioner did not give any teaching assignment to the respondent during a given term or semester, even if factually true, did not amount to an actionable violation of respondent's rights. It did not amount to illegal dismissal of the part-time teacher.

The law, while protecting the rights of the employees, authorizes neither the oppression nor destruction of the employer.[13] And when the law tilts the scale of justice in favor of labor, the scale should never be so tilted if the result would be an injustice to the employer.[14]

WHEREFORE, the petition is **GRANTED**. The Decision dated May 21, 2002 and the Resolution dated February 12, 2003 of the Court of Appeals in CA-G.R. SP No. 63240, which sustained those of the NLRC, are **NULLIFIED** and **SET ASIDE**. The Decision of the Executive Labor Arbiter of the Regional Arbitration Branch II, Tuguegarao City, Cagayan, is hereby **REINSTATED**.

SO ORDERED.

Davide, Jr., *C.J., (Chairman)*, Ynares-Santiago, Carpio, and Azcuna, *JJ.*, concur.

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[1] Rollo, pp. 56-61. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Mariano C. Del Castillo, and Edgardo F. Sundiam concurring.

[2] Id. at 63.

[3] Id. at 44-45.
[4] Id. at 53.
[5] Id. at 29.
[6] Section 93. Regular or Permanent Status. Those who have served the probationary period shall be made regular or permanent. Full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.
[7] Section 92. Probationary Period. Subject in all instances to compliance with Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on the trimester basis.
[8] La Consolacion College vs. National Labor Relations Commission, G.R. No. 127241, 28 September 2001, 366 SCRA 226, 230 citing University of Sto. Tomas vs. NLRC, G.R. No. 85519, 15 February 1990, 182 SCRA 371, 377.
[9] U. Sarmiento III, Manual of Regulations for Private Schools Annotated 686-689 (1st ed., 1995).
[10] See University of Sto. Tomas vs. NLRC, supra, note 8 at 378.
[11] See National Mines and Allied Workers' Union vs. San Ildefonso College–RVM Sisters Administration, G.R. No. 125039, 20 November 1998, 299 SCRA 24, 38.
[12] U. Sarmiento III, op. cit. supra note 9 at 186.
[13] DI Security and General Services, Inc. vs. NLRC, G.R. No. 124134, 20 November 1996, 264 SCRA 458, 466 citing Pacific Mills, Inc. vs. Alonzo, G.R. No. 78090, 26 July 1991, 199 SCRA 617, 622.
[14] St. Theresa's School of Novaliches Foundation vs. NLRC, G.R. No. 122955, 15 April 1998, 289 SCRA 110, 112 citing Philippine Geothermal, Inc. vs. NLRC, G.R. No. 106370, 8 September 1994, 236 SCRA 371, 379.